ANG LEONG v. PUBLIC PROSECUTOR

[R. Cr. J. (Gunn Chit Tuan J.) January 9, 1984]
[Selangor – Criminal Revision No. 8 of 1983]

Fisheries – Revision – Conviction under Regulation 6(2) of the Fisheries (Cockles Conservation & Culture) Regulations 1964 – Forfeiture of lorry under section 14 of the Fisheries Act, 1963 (Revised 1978) – Whether lorry 'necessary' ingredient – Whether conviction and forfeiture correct.

Criminal Law and Procedure – Plea of guilty only amounts to an admission of acts alleged and not an admission of guilt – Fisheries (Cockles Conservation & Culture) Regulations 1964, reg. 6(2).

In this case employees of the applicant were convicted when they pleaded guilty on the charge of transporting undersized cockles for purposes of consumption, an offence under Regulation 6(2) of the Fisheries (Cockles Conservation & Culture) Regulations, 1964. The applicant's lorry was forfeited. In his application for revision, the applicant stated that neither he nor his employees were given an opportunity to explain to the trial Court that his lorry was hired to carry cockles sold by MAJUIKAN under licence granted under the said Regulations.

Held: (1) the conviction of the applicant's employees was wrong because they did not take the undersized cockles for consumption within the meaning of regulation 6(2) of the Fisheries (Cockles Conservation & Culture) Regulations, 1964. They were merely carrying or transporting the cockles which had apparently been taken by MAJUIKAN under a licence granted to them under the said Regulations for consumption by their customers;

(2) the plea of guilty only amounted to an admission that they committed the acts alleged against them and was not an admission of the guilt under the particular Regulation;

(3) the applicant's lorry was not a necessary ingredient of the said offence under regulation 6(2) and it was therefore not liable to forfeiture under section 14 of the Fisheries Act 1963.

Cases referred to:

(1) *Public Prosecutor* v. *Syed Bakri* [1955] M.L.J. xvii.
(2) *Heng Kim Khoon* v. *Public Prosecutor* [1972] 1 M.L.J. 30.
(3) *Public Prosecutor* v. *Ismail bin Yusof* [1979] 2 M.L.J. 119.

CRIMINAL REVISION.

Yusuf Khan for the applicant.

Phang Ah Hee (Deputy Public Prosecutor) for the respondent.

Gunn Chit Tuan J.: Two employees of one Ang Leong (the applicant) were convicted of an offence under Regulation 6(2) of the Fisheries (Cockles Conservation and Culture) Regulations, 1964 (the said Regulations) on the following amended charge:-

"That you on December 30, 1982 at 10.00 p.m., at Batu 1, Jalan Kelang, Kuala Selangor, in the district of Kuala Selangor were found to have taken 60 begs *(sic)* of cockles less than 31.8 mm. for the purpose of consumption on board a lorry bearing registration No. BAA 7161 and thereby have committed an offence under Regulation 6(2) of the Fisheries (Cockles Conservation and Culture) Regulations, 1964, and punishable under section 11(1) of the Fisheries Act, 1963 (Revised 1978)".

The lorry No. BAA 7161 which belongs to the applicant was forfeited by an order of the learned Magistrate. As the applicant's employees had failed to appeal within the statutory time limit, he wrote to the High Court on September 29, 1983, to ask a Judge to consider exercising his powers of revision as neither he nor his employees were given an opportunity to explain to the trial Court that his lorry was only hired to carry the cockles sold by MAJUIKAN. Encik Yusof Khan, who appeared for the applicant before me when I considered whether to exercise my powers of revision, referred to the above charge and to regulation 6(2) of the said Regulations which is as follows:-

"No cockle which is less than 1 1/4 inches, measured in a straight line across the widest part of the shell shall be taken for consumption."

Then after referring to the observations of Thomson C.J. (as he then was) on framing charges in *Public Prosecutor* v. *Syed Bakri*[1] he submitted that a person could not take any cockles unless he was licensed under the said Regulations. It was his contention, after referring to the judgment of Sharma J. in *Heng Kim Khoon* v. *Public Prosecutor*[2], that the plea of guilty of the applicant's employees only amounted to an admission that they committed the acts alleged against them and was not an admission of the guilt under the particular Regulation. If the employees had pleaded guilty under an erroneous view of the law their conviction cannot stand, and in such a case the plea of guilty did not avail because they cannot be said to have committed the offence in question in the eyes of the law. He submitted that the above charge was defective and that the conviction of the applicant's employees was wrong.

Counsel submitted further that even if the above charge was correct, yet the forfeiture of the lorry was wrong as the learned Magistrate in this case had presumably acted under section 14 of the Fisheries Act, 1963, (Revised 1978). He referred to

the Federal Court's decision in *Public Prosecutor* v. *Ismail bin Yusof*[3] and submitted that the lorry used must have been a "necessary" ingredient of the offence. Counsel then referred to the said Regulation 6(2) again and pointed out that an offence under that Regulation can be committed without the use of a lorry.

The learned deputy who was asked to address the Court submitted that the charge was correct but conceded that the lorry in this case did not come within the purview of section 14(1) of the Fisheries Act, 1963 (Revised 1978), which is as follows:-

"An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made by the court before which the prosecution with regard thereto has been had and an order for the forfeiture of such thing shall be made if it is proved to the satisfaction of the court that –

(a) the offence committed is for –

(i) using any net, instrument, fishing material or appliance which is prohibited by or under this Act or any regulations or rules made thereunder; or

(ii) doing or carrying on an act without a licence or permit required under this Act or any regulations or rules made thereunder, and

(iii) that thing was the subject matter of, or was used in the commission of, the offence, notwithstanding that no person may have been convicted of such offence"

Having considered the arguments of both counsel, I considered that the conviction of the applicant's employees under Regulation 6(2) of the said Regulations was wrong because they did not take the undersized cockles for consumption within the meaning of that Regulation. They were merely carrying or transporting the cockles which had apparently been taken by MAJUIKAN under a licence granted to them under the said Regulations for consumption by their customers. In any case the use of the applicant's lorry was not a necessary ingredient of the said offence under Regulation 6(2) of the said Regulations and it was therefore not liable to forfeiture under section 14 of the Fisheries Act, 1963. In the circumstances, I therefore set aside the learned Magistrate's order of forfeiture and directed that the lorry be returned to the applicant.

Order accordingly.

Solicitors: *Yusuf Gulam Lee & Co.*

LEE LOOK v. PUBLIC PROSECUTOR

[A. Cr. J. (Gunn Chit Tuan J.) January 12, 1984]

[Kuala Lumpur – Federal Territory Criminal Appeal No. 80 of 1979]

Criminal Law and Procedure – Charge of trafficking in dangerous drugs – Cautioned statement recorded by investigating officer – Cautioned statement missing and not part of appeal record – Conviction of possession of dangerous drugs – Dangerous Drugs Act, 1952, ss. 12 & 39B.

Dangerous Drugs – Trafficking – Possession – Charge substituted – Order of whipping – Dangerous Drugs Act, 1952, ss. 12 & 39B.

The appellant appealed against his conviction for trafficking in dangerous drugs. The only evidence of trafficking was in the cautioned statement, which it appeared was recorded by the investigating officer. The cautioned statement was missing and did not form part of the appeal record.

Held: (1) in the circumstances as the cautioned statement was recorded by the investigating officer who was actively involved in the investigation the learned President should have as a matter of law and fact held that the cautioned statement was inadmissible in evidence as it might result in a miscarriage of justice;

(2) in any event the cautioned statement did not form part of the appeal record and on the recorded evidence in the appeal records there was therefore only evidence to prove that the appellant was guilty of an offence of possession of dangerous drugs;

(3) the conviction of the appellant for trafficking in dangerous drugs would be quashed and a conviction for the offence of possession of dangerous drugs substituted and the appellant sentenced to 3 years' imprisonment and 6 strokes of whipping.

Case referred to:-

(1) *Cheong See Leong* v. *Public Prosecutor* [1949] M.L.J. 67.

CRIMINAL APPEAL.

K. Chandra for the appellant.

Gooi Soon Seng (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J.: The appellant, Lee Look, was charged in the Sessions Court Kuala Lumpur for trafficking in dangerous drugs, to wit, heroin weighing 15.29 grammes under section 39B(1) (a) of the Dangerous Drugs Act, No. 32/52, and was on July 11, 1979, convicted and sentenced to life imprisonment and two strokes of the rattan under sub-section (2) of section 39B of the said Act.